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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 9, 150

[Docket ID OCC-2018- 0018]

RIN 1557-AE46

Fiduciary Capacity; Non-Fiduciary Custody Activities

AGENCY: The Office of the Comptroller of the Currency.

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is inviting comment on an advance notice of proposed rulemaking (ANPR) regarding its fiduciary activities rules and a potential rule for non-fiduciary custody activities of national banks, Federal savings associations, and Federal branches of foreign banks. Specifically, the OCC is considering an amendment to its fiduciary rule to update the definition of fiduciary capacity to include certain State recognized trust-related activities. The OCC also is considering issuing a regulation that would establish certain basic requirements for non-fiduciary custody activities of national banks and Federal savings associations.

DATES: Comments must be received by [INSERT 60 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: You may submit comments to the OCC by any of the methods set forth below. Commenters are encouraged to submit comments through the Federal eRulemaking Portal or e-mail, if possible. Please use the title “Fiduciary Capacity; Non-Fiduciary Custody Activities” to

facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- Federal eRulemaking Portal—“Regulations.gov”: Go to *www.regulations.gov*.

Enter “Docket ID OCC-2018-0018 in the Search Box and click “Search.” Click on “Comment Now” to submit public comments. Click on the “Help” tab on the Regulations.gov home page to get information on using Regulations.gov, including instructions for submitting public comments.

- E-mail: *regs.comments@occ.treas.gov*.

- Mail: Chief Counsel’s Office, Office of the Comptroller of the Currency, 400 7th Street, SW., suite 3E-218, Washington, DC 20219.

- Hand Delivery/Courier: 400 7th Street, SW., suite 3E-218, Washington, DC 20219.

- Fax: (571) 465-4326.

Instructions: You must include “OCC” as the agency name and “Docket ID OCC-2018-0018” in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the Regulations.gov website without change, including any business or personal information provided such as name and address information, e-mail addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this rulemaking action by any of the following methods:

- Viewing Comments Electronically: Go to *www.regulations.gov*. Enter “Docket ID OCC-2018-0018” in the Search box and click “Search.” Click on “Open Docket Folder” on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on “View all documents and comments in this docket” and then using the filtering tools on the left side of the screen. Click on the “Help” tab on the Regulations.gov home page to get information on using Regulations.gov. The docket may be viewed after the close of the comment period in the same manner as during the comment period.

- Viewing Comments Personally: You may personally inspect comments at the OCC, 400 7th Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649-6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649-5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

FOR FURTHER INFORMATION CONTACT: Patricia Dalton, Technical Expert for Market Risk, Asset Management, (202) 649-6401; David Stankiewicz, Special Counsel, or Asa Chamberlayne, Counsel, (202) 649-7299, or Heidi M. Thomas, Special Counsel, or Chris Rafferty, Attorney, (202) 649-5490, Chief Counsel’s Office, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219. For persons who are deaf or hearing impaired, TTY, (202) 649-5597.

SUPPLEMENTARY INFORMATION:

I. Introduction

Twelve U.S.C. 92a¹ and 12 U.S.C. 1464(l) and (n)² set forth the authority for fiduciary activities of national banks³ and Federal savings associations, respectively. While there are some differences, the fiduciary authority for national banks and Federal savings associations is substantially similar. OCC regulations implementing the substantive provisions of these statutes are set forth at 12 CFR part 9 for national banks and Federal branches of foreign banks (collectively, national banks) and 12 CFR part 150 for Federal savings associations.⁴

The OCC is considering an amendment to these fiduciary rules that would update the definition of “fiduciary capacity” so that this term would be more consistent with how the role of bank fiduciaries has developed under State law. The OCC also is considering adopting a rule to address non-fiduciary custody activities of national banks and Federal savings associations. The OCC is seeking public comment on all aspects of these two possible actions, discussed in detail below. The OCC will use these comments to determine whether to proceed with a proposed rule and, if so, to inform the content of a proposed rule. The OCC will invite public comment on a detailed proposal before adopting any final rule.⁵

II. Definition of “Fiduciary Capacity”

Twelve CFR parts 9 and 150 apply to national banks and Federal savings associations, respectively, that act in a “fiduciary capacity.” Section 9.2(e) defines “fiduciary capacity” to mean “trustee, executor, administrator, registrar of stocks and bonds, transfer agent, guardian,

¹ Section 1 of the Act of September 28, 1962.

² Section 5(l) and (n) of the Home Owners’ Loan Act of 1933.

³ Twelve U.S.C. 92a also applies to Federal branches and agencies pursuant to 12 U.S.C. 3102(b), which provides that the operations of Federal branches and agencies shall be conducted with the same rights and privileges accorded national banks.

⁴ Twelve CFR 5.26 sets forth the OCC’s requirements for national banks and Federal savings associations to obtain OCC approval to engage in fiduciary activities.

⁵ The OCC plans to issue a proposed rulemaking at a later date that would integrate its national bank and Federal savings association fiduciary activities rules so that only one rule applies to both national banks and Federal savings associations, taking into account consistency with the underlying statutes that apply to each type of institution.

assignee, receiver, or custodian under a uniform gifts to minors act; investment adviser, if the bank receives a fee for its investment advice; any capacity in which the bank possesses investment discretion on behalf of another; or any other similar capacity that the OCC authorizes pursuant to 12 U.S.C. 92a.” Twelve CFR 150.30 applies a similar definition with respect to Federal savings associations. Many of the named capacities listed in these rules are specified by statute.⁶

Numerous States have modified their trust laws in recent years to define and set expectations for various trust-related roles, including roles that do not involve investment discretion. Because some of these laws use terms other than those specified in 12 CFR 9.2(e) and 150.30 to describe trust-related and fiduciary capacities, they are not explicitly included in the definition of fiduciary capacity in 12 CFR 9.2(e) and 150.30.

For example, some States have amended their trust laws to authorize directed trusts. In a traditional trust, the trustor grants the trustee the power to control the investment, management, distribution, and other administration decisions of the trust. By contrast, in a directed trust, the trustor may grant one or more trust advisers the power to direct the trustee with respect to these powers. State laws may not always refer to such trust advisers as “trustees” but instead may use other names not listed in the OCC’s regulations. For example, the Uniform Directed Trust Act⁷ refers to such advisers generally as “trust directors.” Meanwhile, Illinois law refers to such advisers as either “investment trust advisers,” “distribution trust advisers,” or “trust protectors” depending on the discretion exercised.⁸ By default under the Illinois statute, an “investment trust

⁶ See 12 U.S.C. 92a; 12 U.S.C. 1464(n).

⁷ The Uniform Directed Trust Act was drafted by the National Conference of Commissioners on Uniform State Laws in order to address the rise of directed trusts. See NAT’L CONF. OF COMM’RS ON UNIFORM STATE LAWS, UNIFORM DIRECTED TRUST ACT (2017). New Mexico recently adopted this uniform law. See Uniform Directed Trust Act, 2018 N.M. Laws, ch. 63 (S.B. 101) (to be codified at the Uniform Trust Code N.M. Stat. § 46a).

⁸ See 760 ILCS 5/16.3.

adviser” controls investment decisions; a “distribution trust adviser” controls distribution decisions; and a “trust protector” may be given various powers by the trust instrument, including the power to remove and appoint a trustee, investment trust adviser, or distribution trust adviser.⁹ Delaware law similarly refers to such trust advisers generally as “advisers” or, in the case of advisers with the power to remove and appoint trustees and other advisers, as “protectors.”¹⁰ State directed trust statutes often provide that trust advisers are fiduciaries with the same responsibility to exercise the authority or power granted to them as a trustee would have, unless provided otherwise by the trust instrument.¹¹

This expanding list of terms for trust-related and fiduciary roles under State law that are not explicitly identified as fiduciary capacities under OCC regulations, and that may not involve investment discretion or investment advisory services, may create uncertainty for national banks and Federal savings associations with respect to the activities governed by OCC fiduciary regulations. This potential uncertainty may make it difficult for institutions to assess and manage litigation risk and to understand OCC expectations for managing these accounts in a safe and sound manner. Therefore, the OCC is considering amending the definition of fiduciary capacity to include these new roles.

Possible Regulatory Revisions

The OCC is contemplating updating the regulatory definition of “fiduciary capacity” to include any activity based on the authority a national bank or Federal savings association has with respect to a trust, such as the power to make discretionary distributions, override the trustee,

⁹ *Id.*

¹⁰ See 12 Del. C. § 3313. In addition, the Employee Retirement Income Security Act of 1974 (ERISA) defines fiduciary based on function and not only on named capacities. For example, pursuant to section 3(21) of ERISA (29 U.S. Code § 1002(21)), a person using discretion in administering and managing a plan or controlling the plan’s assets is a fiduciary to the extent of that discretion or control.

¹¹ See, e.g., NAT’L CONF. OF COMM’RS ON UNIFORM STATE LAWS, UNIFORM DIRECTED TRUST ACT § 8 (2017); 760 ILCS 5/16.3(e); 12 Del. C. § 3313(a).

or select a new trustee.¹² This change could reduce ambiguity and confusion for national banks and Federal savings associations. It also could provide for the uniform application of OCC regulations to trust activities that State laws describe with different terminology.

Request for Comments

The OCC invites comment on whether amending the definition of “fiduciary capacity” to include these trust advisory functions would be useful and, if so, whether the approach suggested by the OCC is appropriate. The OCC specifically invites comment on what trust adviser activities or other capacities national banks and Federal savings associations are performing in providing services to their customers, and whether the OCC should consider explicitly identifying these activities as fiduciary activities subject to 12 CFR part 9 or 12 CFR part 150, respectively. Furthermore, the OCC invites commenters to identify any specific State statutes, uniform laws, or terminology that the OCC should consider when assessing whether an activity or appointment is a “fiduciary capacity.” The OCC also invites comments on other ways to amend this definition so that it encompasses evolving trust capacities, including trust capacities recognized or permitted under State law. Finally, the OCC invites comment on whether there are any additional fiduciary roles that State chartered banks currently perform that national banks and Federal savings associations also may be interested in performing that the OCC should consider identifying as a fiduciary capacity.

III. Custody Activities

Twelve CFR 9.8 and 9.13 impose general recordkeeping and custody requirements for a national bank that acts as a fiduciary. Twelve CFR 150.230 through 150.250 and 150.410 through 150.430 impose similar requirements for Federal savings associations. Specifically,

¹² This ANPR refers to activities based on the authority an institution has with respect to a trust as “trust adviser activities.”

these provisions require bank and savings association fiduciaries to provide adequate safeguards and controls over client fiduciary account assets, to keep these fiduciary account assets separate from bank and savings association assets, and to maintain and segregate certain records related to these accounts.

National banks and Federal savings associations also provide custody and recordkeeping services to clients for non-fiduciary accounts. In doing so, these banks and savings associations are not acting in a fiduciary capacity and, therefore, these activities are not subject to the OCC's fiduciary regulations. However, whether acting in a fiduciary or non-fiduciary custodial capacity, the principal roles of a national bank and Federal savings association custodian remain the same: to safeguard a client's assets and to operate in a safe and sound manner.

Non-fiduciary custody activities have become more sophisticated since the OCC issued its fiduciary regulation and may include additional services such as fund accounting, fund administration, securities lending, and global custodial services involving the execution of foreign exchange transactions and the processing of tax reclaims.¹³ In addition, the types of custody activities and assets continue to evolve with, for example, some banks assessing the risk and benefits of providing custody services for cryptocurrencies and other digital assets.

Furthermore, the volume of non-fiduciary custody assets held in national banks and Federal savings associations has increased since the OCC updated its fiduciary regulation in 1996, and, as of December 31, 2018, totaled approximately \$41.7 trillion, with national banks holding \$39.9 trillion and Federal savings associations holding \$1.8 trillion.¹⁴ The size of the

¹³ A global custodian provides custody services for cross-border securities transactions in various markets around the world through either its own office in the local market or the use of agent banks as sub-custodians.

¹⁴ Schedule RC -T – Fiduciary and Related Services, Consolidated Reports of Condition and Income, December 31, 2018. The OCC notes that because national banks and Federal savings associations may provide custody services that are not reportable on Schedule RC-T, including custody services offered by banks and savings associations that do not possess fiduciary powers, the amount of non-fiduciary custody assets is likely larger.

custody services provided by national banks and Federal savings associations is significantly more (in dollar terms) than fiduciary assets (\$8.7 trillion)¹⁵ and on-balance sheet total assets (\$12.1 trillion).¹⁶

The expansion of non-fiduciary custody activities and the growth in size of non-fiduciary custody assets increase operational, reputational, credit, and other risks for national bank and Federal savings association custodians. The OCC believes that current OCC guidance appropriately identifies safe and sound risk management practices for custodians, including the protection of client assets in the custody of national banks and Federal savings associations.¹⁷ However, the OCC also believes that it may be appropriate to set out in regulation the core standards for non-fiduciary custody activities because of the heightened risks a business line of this scale poses to banks and savings associations and because of the importance of providing adequate safeguards for client assets. Because non-fiduciary custody activities are not subject to 12 CFR 9.13, 150.230, 150.240, and 150.250 and are not governed by any other OCC regulation that specifically requires a custodial bank or savings association to safeguard or segregate client assets, the OCC invites comment on whether it should issue rules to govern non-fiduciary custody activities.

The OCC expects that any custody rule the agency issued would be consistent with its guidance on custody service activities for national bank and Federal savings association

¹⁵ Schedule RC-T – Fiduciary and Related Services, Consolidated Reports of Condition and Income, December 31, 2018.

¹⁶ Schedule RC- Balance Sheet, Consolidated Reports of Condition and Income, December 31, 2018.

¹⁷ The OCC has issued substantial guidance regarding non-fiduciary custody activity. See the “Custody Services” (Jan. 2002), “Asset Management Operations and Controls” (Jan. 2011), “Unique and Hard-to-Value Assets” (August 2012), “Retirement Plan Products and Services” (Feb. 2014), and “Conflicts of Interest” (Jan. 2015) booklets of the *Comptroller’s Handbook*, and OCC Bulletin 2013-29, “Third-Party Relationships – Risk Management Guidance” (Oct. 30, 2013). The OCC made its guidance on asset management operations and controls applicable to Federal savings associations on January 6, 2012 (see OCC Bulletin 2012-2) and its guidance on custody services applicable to Federal savings associations on May 17, 2012 (see OCC Bulletin 2012-15).

custodians¹⁸ and be compatible with industry standards. Therefore, the OCC believes that such a custody rule would impose minimal new responsibilities on well-managed national banks or Federal savings associations.

If the OCC were to implement a rule specific to non-fiduciary custodial capacities, the OCC also could consider amending the existing fiduciary custody language in 12 CFR 9.13, 150.230, 150.240, and 150.250 to ensure that the same standards would apply to fiduciary custody accounts. This would provide a single consistent standard for safeguarding client assets and clarify expectations for custody of both fiduciary and non-fiduciary account assets.

The OCC notes that an OCC custody rule for national banks and Federal savings associations would complement the applicable regulations of other regulators related to the custody of client assets. Specifically, the Securities and Exchange Commission and the Commodity Futures Trading Commission have issued regulations related to the custody of client assets by their regulated entities,¹⁹ and the Internal Revenue Service has issued rules applicable to the custody of Individual Retirement Accounts.²⁰ Furthermore, U.S. Department of the Treasury regulations²¹ set forth specific requirements for banks and savings associations that hold government securities in a custodial capacity, Freddie Mac and Fannie Mae impose specific requirements to be included in document custody agreements,²² and the National

¹⁸ *Id.*

¹⁹ See 17 CFR 275.206(4)-2 (Custody of funds or securities of clients by investment advisers); 17 CFR 270.17f-1 (Custody of securities with members of national securities exchanges); 17 CFR 270.17f-2 (Custody of investments by registered management investment company); 17 CFR 270.17f-4 (Custody of investment company assets with a securities deposit); 17 CFR 270.17f-5 (Custody of investment company assets outside the United States); 17 CFR 270.17f-6 (Custody of investment company assets with Futures Commission Merchants and Commodity Clearing Organizations); and 17 CFR 270.17f-7 (Custody of investment company assets with a foreign securities depository).

²⁰ See 26 CFR 1.408-2(d).

²¹ 17 CFR 450 (Custodial Holding of Government Securities by Depository Institutions).

²² See Freddie Mac Document Custody Procedures Handbook (August 2015), <http://www.freddiemac.com/cim/pdf/EntireManual.pdf> and Fannie Mae Requirements for Document Custodians

Association of Insurance Commissioners has adopted a model act that addresses custody and the holding and transferring of an insurance company's securities.²³ Various States also have adopted custody requirements for insurance companies and investment advisers operating in their jurisdictions.²⁴ In addition, foreign jurisdictions, including the United Kingdom and the European Union, have adopted specific regulatory requirements covering custody activities, many of which were strengthened in the wake of the 2008 financial crisis.²⁵ In general, these regulatory requirements impose certain minimum safekeeping and segregation requirements on a regulated entity for the custody of client assets. The objective of these requirements is to safeguard the assets of clients, with bank custodians playing a key role in this process. Some of these requirements may directly or indirectly apply to accounts for which a national bank or Federal savings association is custodian. The OCC believes a well-defined regulatory framework for national bank and Federal savings association custody activities would codify the expectations of other regulators that bank custodians safeguard the client assets of the entities that they regulate in a safe and sound manner.

(Version 12.0, April 2018), https://www.fanniemae.com/content/eligibility_information/document-custodians-requirements.pdf.

²³ See NAT'L ASS'N OF INS. COMM'RS, MODEL ACT ON CUSTODIAL AGREEMENTS AND THE USE OF CLEARING CORPORATIONS, MDL-295 (2008), https://www.naic.org/prod_serv_model_laws.htm.

²⁴ Regarding State custody requirements for insurance companies, *see, e.g.*, Fla. Admin. Code Ann. r. 690-143.042 (2017) (Custody Agreements; Requirements); Tenn. Comp. R. & Regs. 0780-01-46 (2013) (Regulations on Custodial Agreements and the Use of Clearing Corporations); Wyoming Administration Rules – Insurance Department – General Agency, Board of Commission Rules, Chapter 57 (2017) (Regulation on Custodial Agreements and the Use of Clearing Corporations). Regarding State custody requirements for investment advisers, *see, e.g.*, Mass. Regs. Code tit. 950, § 12.205(5) (2014) (Discretion and Custody Requirements); 10 Pa. Code § 404.014 (2018) (Custody Requirements for Investment Advisers); Wash. Admin. Code § 460-24A-105 to 460-24A-108 (2019) (Custody Requirements for Investment Advisers).

²⁵ *See, e.g.*, Financial Conduct Authority, FCA Handbook, Cass § 6 (custody rules) (UK), <https://www.handbook.fca.org.uk/handbook/CASS/6/?view=chapter>; Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 Text with EEA relevance, 2011 O.J. (L 174), 1-73, <https://eur-lex.europa.eu/eli/dir/2011/61/oj>; Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations, and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies, and sanctions. 2014 OJ (L257), 186-213, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0091>.

Possible Regulatory Revisions

An OCC rule governing the non-fiduciary custody activities of national banks and Federal savings associations would be based on the following core elements of sound risk management, consistent with OCC guidance: (1) separation and safeguarding of custodial assets; (2) due diligence in selection and ongoing oversight of sub-custodians;²⁶ (3) disclosure in custodial contracts and agreements of the custodian's duties and responsibilities; and (4) effective policies, procedures, and internal controls.²⁷ These core elements focus on protecting client assets from loss due to physical damage, fraud, inaccurate or improper accounting, or bankruptcy or insolvency of a custodian or its sub-custodian, and enhance the safety and soundness of the national bank or Federal savings association engaged in custody activities or services. A rule including these core elements would codify safeguards to protect client assets, including imposing risk management standards on banks and savings associations that use sub-custodians.

Request for Comments

The OCC invites comment on all aspects of a potential non-fiduciary custody rule. In particular, the OCC is interested in whether a custody rule would help clarify the role of a national bank or Federal savings association acting as a non-fiduciary custodian; whether the potential elements of such a rule, as outlined in this ANPR, are appropriate; and whether the OCC should consider additional elements.

²⁶ Sub-custodians are third party entities that provide custody services to national banks or Federal savings associations, pursuant to a written agreement, with respect to custody assets for which the bank or savings association is custodian. For example, bank or savings association custodians that are not members of a central securities depository often engage financial institutions that are members as their agents or sub-custodians. Bank and savings association custodians also use sub-custodians known as global custodians to facilitate securities transactions in other countries. The global custodian provides access to central securities depositories in those countries either through its local offices or by engaging a local sub-custodian.

²⁷ *Comptroller's Handbook*, *supra*, note 17.

In particular, the OCC invites comment on potential provisions that would implement the core elements of a custody rule. Specifically, should an OCC rule direct national banks and Federal savings associations to:

- Implement and maintain effective internal controls to safeguard both physical and book-entry assets held in custody accounts by the national bank or Federal savings association?
- Implement and maintain adequate safeguards and controls when custody account assets are maintained off-premises?
- Maintain custody assets separate from the bank's or savings association's assets, as currently required in 12 CFR 9.13 and 150.250 for custody of fiduciary assets?
- Maintain the custody assets of each account separate from all other accounts or maintain records that identify the custody assets as the property of each particular account, as currently required in 12 CFR 9.8, 9.13, 150.250, and 150.410 through 150.430 for custody of fiduciary assets?
- Periodically verify the amount and location of custody assets held physically by comparing the bank's or savings association's books and records of custody assets to the physical assets in their possession?
- Periodically compare custody assets held in book-entry form or off-premises by comparing the bank's or savings association's books and records of custody assets to the books and records of the book-entry issuer, sub-custodian, or central securities depository?

- Place custody assets in the joint custody or control of no fewer than two officers or employees, which would be consistent with the current requirement in 12 CFR 9.13 and 150.230?
- Undertake effective due diligence by performing an in-depth assessment of a sub-custodian's ability to perform the activity in compliance with all applicable laws and regulations prior to depositing custodial funds with the sub-custodian, and perform ongoing periodic monitoring of the sub-custodian?²⁸
- Adopt and follow written policies and procedures to ensure that custody services are provided in accordance with custody agreements and in compliance with the custody regulation and applicable law, similar to the requirements of 12 CFR 9.5 and 150.140, respectively, for national banks and Federal savings associations exercising fiduciary powers?

The OCC also invites comments on whether a custody rule should include any specific requirements for custodial agreements. Specifically, should an agreement:

- Clearly define the custodian's duties and responsibilities, and include a full and accurate disclosure of fees and pricing, as well as provisions detailing the relationship between the client as principal and the custodian as agent?
- Disclose whether the bank or savings association is acting in any other capacity with respect to services ancillary to the custody relationship, *e.g.* principal capacity for foreign exchange trades or depository for cash?

²⁸ See OCC Bulletin 2013-29, "Third-Party Relationships – Risk Management Guidance" (Oct. 30, 2013).

- Include adequate disclosures, when applicable, to make clear that the national bank or Federal savings association custodian is not acting in a fiduciary capacity?

In addition to comments on specific components of an OCC rule, the OCC invites comment on the following issues:

- Should the OCC update the fiduciary standards of 12 CFR 9.13, 150.230, 150.240, and 150.250 to be consistent with any non-fiduciary account standards that the OCC may adopt?
- Do any of the standards mentioned above conflict with any other Federal requirements applicable to national banks and Federal savings associations or regulated entities that use bank custody services?
- Should the OCC limit the types of entities that a national bank or Federal savings association may use as a sub-custodian or limit the type of sub-custodian for specific types of accounts? For example, the Internal Revenue Service limits which entities may act as custodians for Individual Retirement Accounts.²⁹ If the OCC imposes a limit, what types of accounts should be subject to the limitation and why?
- What type of retail or commercial custody and safe keeping activities should an OCC non-fiduciary custody rule exclude, if any, and why?

Finally, the OCC invites comment on whether any of the possible provisions listed above would be overly burdensome, especially for community institutions, and if so, whether there are approaches that would address the same issues in a less burdensome way. The OCC also invites comment from clients of national bank and Federal savings association custodians

²⁹ See 26 CFR 1.408-2.

on the appropriateness of these suggested provisions and whether the OCC should consider additional provisions to safeguard custody assets.

Dated: April 23, 2019

Joseph M. Otting,

Comptroller of the Currency.

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